No. 953

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Supreme Court of the United States

OCTOBER TERM, 1942

PEOPLE OF THE STATE OF ILLINOIS, ex rel. BLANCHE DAVIDSON, CARL C. CRAMER and FRANK W. PHILLIPS,

Petitioners,

vs.

PRESTON BRADLEY, JOHN DILL, OTTO G. BEICH, HARRIETT MCINTYRE, CHARLES E. MORRIS, HELEN ROSE PEGELOW, RUSSELL GUIN, LINDELL STURGIS, JACOB E. ALSCHULER, FRANK G. THOMPSON, and JOHN A. WIELAND, Constituting THE TEACHERS COLLEGE BOARD OF THE STATE OF ILLINOIS,

Defendants.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS, AND BRIEF IN SUPPORT THEREOF.

URBAN A. LAVERY,
Attorney for Petitioners.

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Defendants.

PETITION FOR CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioners, Blanche Davidson, Carl C. Cramer and Frank W. Phillips, by Urban A. Lavery, their attorney, respectfully pray that a Writ of Certiorari be issued by this Court to review the judgment below of the Supreme Court of Illinois, reversing (without remanding) a judgment of the Superior Court of Cook County, in that State; the latter Court, after trial, having entered a judgment in Mandamus, restoring all of the Petitioners to their positions on the Faculty of one of the Teachers Colleges of the State of Illinois.

Judgment and Opinion Below.

The Opinion of the Court below was first filed January 21, 1943. (R. 144-148) That Opinion was later modified (after Petition for Rehearing filed) at the March, 1943, Term. (R. 188-189) The modified Opinion deleted a full paragraph (R. 189) which had appeared in the original Opinion. (R. 147-148) The deleted paragraph was concerned with two points as to "parties" below, which points were vigorously objected to in the Petition for Rehearing. (R. 160-161) The Opinion as thus modified is reported in 47 N. E. (2) 93 (Advance Sheets).

Jurisdiction.

Final judgment of the Supreme Court of Illinois was entered March 15, 1943. (R. 188) That judgment, as already indicated, reversed, without remanding, the judgment of the trial court which had reinstated the Petitioners to their positions on the Faculty of the Northern Illinois State Teachers College, at DeKalb, Illinois, a State institution. (R. 148)

Thereby the judgment and opinion of the State Supreme Court construed certain laws of Illinois in such a way as to deprive the Petitioners of vested property rights, without due process of law, and also as to impair the obligation of their contracts as teachers; and in both these respects (as Petitioners contend) the judgment and opinion below has contravened the Federal Constitution. These Federal questions had not been raised, nor was there any opportunity to raise them, until the judgment of the Supreme Court of Illinois reversed the judgment of the trial court. (R. 181) Thereupon, Petitioners promptly filed a Petition for Rehearing, which among other things, (R. 180-185), challenged such judgment of reversal as contravening the Federal Constitution.

The jurisdiction of this Court is invoked under Section 237b of the Judicial Code as amended (28 U.S.C.A. Sec. 344b); and because the case of *State of Indiana* v. *Brand*, 303 U. S. 95, (which much resembles the case at bar) is believed to authorize and sustain such jurisdiction.

Summary Statement of Matters Involved.

All of the Petitioners, prior to their dismissal in June, 1941, had been for twelve years full-time members of the Faculty of the above mentioned College. (R. 2) That School is one of the five Teachers Colleges of the State of Illinois, all of which are under the control of the Defendants, the "Teachers College Board of the State of Illinois". (R. 2)

Each of the five State Normal Schools (now Teachers Colleges) in Illinois is a separate municipal corporation or "body politic," with its own separate charter or enabling Act. (R. 156) The first School was chartered in 1857, the second in 1869, two more in 1895 (one of which is the DeKalb School here involved), and the fifth in 1899. (R. 156) By the enabling Acts each School is given wide and complete powers of control and management over its own affairs, including, specifically, the appointment and regulation of its Faculty. (R. 21, 168) Because of the fact that these Teachers Colleges have their own separate charters and because they charge tuition fees (R. 169), and for other reasons, they are not a part of the State "Common School" System, (*as the State Court in its Opinion holds by clear implication*) but are in a statutory category by themselves. (R. 167)

The defendant Board is a statutory Board of Education created by the so-called Civil Administrative Code of Illinois (Ill. Rev. Stat. Ch. 127, Sec. 5, *et seq.*) and is charged with the control and management of all the State Teachers Colleges. (R. 2)

In July, 1941, each of the Petitioners was served with summary notice of dismissal by the President of the DeKalb School (R. 12) and each dismissal was approved without discussion but by a divided vote, by the defendant Board (R. 17). No advance notice whatever was given any of the Petitioners, no "hearing" of any kind was afforded them, and no opportunity for defense whatever was given them, either by the School authorities or by the Defendant Board. (R. 67 and 108)

The Petitioners brought Mandamus in the Superior Court of Cook County, asking to be restored to their positions on the ground that they were illegally dismissed. (R. 1-35) The trial court, after listening to the testimony of many witnesses, including the three Petitioners and the President of the School (R. 57-114), ordered that each of the Petitioners be restored to his position, "*until such time as his employment and contract and tenure as such member of the Faculty may be legally and lawfully terminated.*" (R. 119, 124, 130)

The Defendants appealed and (as already stated) the Supreme Court of Illinois, on January 21, 1943, reversed that judgment and denied the Petitioners any relief whatever. (R. 148)

The Petitioners, on February 15, 1943, filed a Petition for Rehearing. (R. 151-187) The Supreme Court of Illinois, on March 15, 1943, directed that such Petition for Rehearing be "stricken in violation of rules," without, however, specifying any rule violated. (R. 188)

The Petition for Rehearing strongly urged (as already suggested) that the judgment and Opinion below, *for the first time,* raised and injected into the case the Federal questions on which relief is sought in this Court. (R. 180-185)

In spite of the fact that the Petition for Rehearing was "stricken," the Court below (as already indicated) thereafter proceeded to modify its Opinion in two important respects, in accordance with certain objections raised in that Petition. (R. 180-185)

Constitutional Provisions, Statutes and Administrative Rules.

A.

Constitutional Provisions.

Because of their bearing on the case the following provisions of the Federal Constitution are here set out:

Art. I, Sec. 10, Clause 1. "No State shall . . . pass any . . . law impairing the obligation of contracts . . ."

Amendment 14, Sec. 1. ". . . nor shall any State deprive any person of life, liberty or property without due process of law . . ."

B.

Statutes.

Because of their primary importance in this case, the following two provisions of the DeKalb School Enabling Act are particularly set out. The first guarantees the right of "hearing" before any member of the School Faculty can be lawfully dismissed, and is as follows:

"Sec. 12. *Trustees' Powers.* The said Board of Trustees" (now the Teachers College Board of Illinois) "shall appoint instructors, together with such

other officers as may be required in said Normal School, fix their respective salaries, and prescribe their several duties. *They shall also have power to remove any of them for proper cause after having given ten days' notice of any charge which may be duly presented, and reasonable opportunity for defense. . . .*"[1] (Italics added.) (Ill. Rev. Stat., Ch. 122, Sec. 462.)

The second statutory provision in the DeKalb School Act which is equally controlling in this case has to do with the "Contract Powers" of the School, and the employment and "regulation" of teachers, and is as follows:

"Sec. 1. *Organization—Corporate Powers.* A body politic and corporate is hereby created by the name of the Northern Illinois State Normal School, to have perpetual succession *with power to contract and be contracted with,* to sue and be sued, to plead and be impleaded, to receive by any legal mode or transfer or conveyance property of any description and to have and hold and enjoy the same; also to make and use a corporate seal with power to break or change the same, *and adopt by-laws, rules and regulations for the government of its members, official agents, and employees:* Provided, such by-laws shall not conflict with the Constitution of the United States or of this State."[2] (Italics added.) (Ill. Rev. Stat., Ch. 122, Sec. 451.)

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1. An almost identical provision is found in all five Normal School Charters, the last four having been copied from the first Normal School Act of 1857. That Act itself seems to have borrowed this idea of "hearing" from the earlier Normal School Acts of Pennsylvania and other Eastern States. The fact is, this provision requiring "hearing" and an opportunity for defense before Normal School Teachers may be dismissed, is common to many of the States of the Union. The Court below by-passed this statute by merely saying:

> "Such provision for removal for cause, if still in effect, doubtless was intended to apply to removals during the course of a school year." (R. 147)

2. It will be noted that there is no limitation prohibiting continuing tenure for teachers or compelling "annual" contracts for teachers, as the Supreme Court of Illinois held was the law of this case (R. 146-147).

C.

Administrative Rules, etc.

Under the statute last above quoted, as well as under the Civil Administrative Code of Illinois (*supra*), the defendant Board has power to make "by-laws, rules and regulations for the government" of the Teachers Colleges. Acting under this express power the defendant Board, long before this controversy arose, had adopted sundry "Rules", which have the force of law so far as these Schools are concerned. Several of these Rules are so pertinent here that they deserve to be set out. The first of these Rules has to do specifically with "Security of Tenure" and is as follows:

> "*Rule 11.* The classification of a teacher according to the provisions of this schedule shall carry with it *security of tenure* during his continuance of satisfactory service and professional growth, unless the reorganization of the work of the School makes it necessary to discontinue the position which he holds."[3]

The second Rule of the defendant Board which is pertinent to this Petition specifically authorizes *three-year contracts* for teachers in certain cases. This Rule was adopted at the same meeting and is published in the same Official Proceedings as the Rule last above quoted, and is as follows:

> "*Rule 13. Leave of Absence to Continue Education*: One teacher from the faculty of each Teachers

3. The set of Rules, of which Rule 11 was one, was formally adopted by the defendant Board at its meeting on October 15, 1928 and is printed in an official publication of the State, entitled as follows:

"Proceedings of
The Normal School Board of
The State of Illinois"
"(*Printed by Authority of the State of Illinois.*)"

College for every twenty-five members or major fraction thereof, may be granted a year's leave of absence on half pay for the purpose of attending some institution of higher learning, provided that teacher shall have already taught five years in the Teachers College and that the amount of the allowance shall not exceed $1,500. Said teacher, however, shall agree to teach at least two more years in the same faculty, and give a note for this amount with proper security, same to be cancelled at the end of the two years of service required. The leave of absence must be applied for at the April meeting of the board."[4]

"Emeritus Service Plan."

A third set of Rules which the Defendant Board formally adopted (in 1934) is also pertinent here, being the so-called "Emeritus Service Plan" for the Teachers Colleges. This "Plan" is set out in full in the Transcript. (R. 24-25) Two sections of this Plan are as follows:

> *"Section 1.* The mandatory retirement age for persons in the employ of the Normal School Board as Presidents or as teachers in the State Teachers Colleges shall be seventy-five years. Retirement may be permissive at the age of sixty-five."
>
> * * *

---

4. Attorney General's Opinion. Shortly after the adoption of "Rule 13" last above set out, the defendant Board asked for and secured an Opinion of the then Attorney General of the State as to the legality of that Rule. The official Attorney General's Opinion, dated May 17, 1929, (*Opinions of Attorney General of Illinois 1929*, p. 246) approving the legality of this Rule 13, said in part:

> "The Normal School Board in making the above Rule or resolution, no doubt had in mind that by the granting of leave of absence to the teachers mentioned in such rule the Normal Schools would obtain an improvement in the qualification of the teachers, and that would by reason of the better qualification of the teacher and the improved instruction, be of benefit to the State. * * *
>
> I am therefore of the opinion that the rule adopted by the said Normal School Board is valid."

It will be noted that the present Attorney General of Illinois, who was Counsel for the Defendants in the trial Court and in the State Supreme Court, succeeded in getting the latter Court to reverse (in effect) both of the above quoted Rules, and the above Attorney General's Opinion.

> "*Section 4.* A teacher who has served thirty-five years in public education, twenty years of which must have been in the State Teachers Colleges of Illinois, shall be eligible to receive an annual emeritus salary."[5]

The necessary and implicit effect of this Plan was (like the two foregoing Rules) to provide a *guaranty of continuing service* to all teachers in the Teachers Colleges. Like the above two Rules this Plan also obviously involves *an administrative construction* of the Illinois Statutes under which a vested right to continuing tenure by the teachers is recognized and approved.

Reasons Relied on for Allowance of Writ.

The necessary effect of the Opinion below was *first* to give such a narrow and restrictive construction to the above cited Statutes as to nullify them so far as the rights of these Petitioners are concerned; and *second* to strike down altogether the Administrative Rules of the defendant Board above set out. In all these particulars the judgment of the State Court has violated both of the Federal Constitution provisions above quoted.

Questions Presented.

The Record here presents the following principal questions:

1. Whether these teachers were not deprived of property rights without due process of law, by reason of their dismissal without any hearing or opportunity for defense.
2. Whether such dismissal did not result in the impairment and destruction of vested contract rights and obligations.

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5. The Transcript (R. 24) shows that this Plan was formally adopted by the defendant Board at its meeting on November 19, 1934.

3. Whether the judgment of the Court below did not destroy and upset a long-standing construction of the laws of Illinois under which important rights of the Petitioners had accrued and become vested, with the result that Petitioners have been denied due process of law in violation of the Fourteenth Amendment.

4. Whether such upsetting of the long-standing construction of the laws of Illinois (by the judgment below) has not impaired the vested property and contract rights of the Petitioners in violation of the so-called "Contract Clause" of the Federal Constitution.

5. Whether the denial to Petitioners by the Court below of any right of hearing or opportunity for defense before dismissal, as guaranteed by the State law, was not a violation of the Federal Constitution, both as regards impairment of contract, and as a denial of due process.

6. Whether the judgment of the Court below did not operate to forfeit vested pension rights of the Petitioners under the laws of Illinois, in violation of the due process clause of the Fourteenth Amendment.

Respectfully submitted,

URBAN A. LAVERY,
Attorney for Petitioners.

